IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP (T) No. 4041/2008
Reserved on:1.9.2010
Decided on:22.9.2010

Rikhi Ram Sharma. **Petitioner.**

Versus

State of Himachal Pradesh and others. …Respondents.

Coram:

Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] Yes

For the petitioner : Mr. Ranjan Sharma, Advocate.

For the Respondents: Mr. P.M. Negi, Dy. Advocate General with Mr. R.P. Singh, Asstt. Advocate General for respondent No.1 to 2-A.

Justice Rajiv Sharma, Judge.

Petitioner was appointed as a Clerk in the respondent-Department on 3.2.1977. He was transferred from the office of Conservator, Kullu Circle to the office of Divisional Forest Officer (Territorial) at Hamirpur and he joined his duties on 4.8.1980. He was allotted Type-III accommodation by the Estate Officer-cum-D.F.O. (T), Hamirpur in the year 1982. He took over the possession of the same. The Estate Officer-cum-D.F.O. (T) fixed the standard rent of the allotted quarter @ Rs. 17.70 per month on 29.10.1984. The Divisional Forest

[1] Whether reporters of the local papers may be allowed to see the judgment? Yes

Officer (Territorial), Hamirpur was designated as the Estate Officer for the purpose of making allotment of Government accommodation pertaining to the Forest Department at Hamirpur. Petitioner had been depositing Rs. 17.70 per month with the respondent-Department from time to time. He deposited rent with Divisional Forest Officer (Territorial), Hamirpur with effect from 1982 to October, 1988. Thereafter he deposited the rent of Rs. 17.70 per month with the Collector (Forest Settlement), Hamirpur with effect from November, 1988 to March, 1991. Thereafter he deposited the rent at the same rate with effect from April, 1991 to March, 1993 with the then Divisional Forest Officer (Social Forestry Division), Hamirpur. He deposited the rent of Rs. 17.70 per month with effect from April, 1993 till the date of his retirement on 30.9.1995 with Divisional Forest Officer Flying Squad, Hamirpur. Petitioner was not served with any notice for the enhancement of the rent with effect from 1984 till 1994. The Divisional Forest Officer Flying Squad, Hamirpur issued an order on 28.6.1994 to the petitioner stating therein that the petitioner was liable to pay enhanced rent/licence fee with effect from 1988. He submitted representation against the same on 23.8.1994. However, the respondents deducted the amount partly from the salary of the petitioner for the

period with effect from April, 1995 to September, 1995. Respondents demanded a sum of Rs.5094/- for the period with effect from 1.11.1988 to 30.9.1995 and then with effect from 1.10.1995 to 31.1.1996 for over staying in the Government accommodation. Thereafter the Divisional Forest Officer Flying Squad, Hamirpur issued order on 28.2.1996 whereby a sum of Rs. 5094/- have been recovered from the D.C.R.G. and leave encashment of the petitioner on account of arrears of increased rent with effect from 1.11.1988 to 30.9.1995 and then from 1.10.1995 to 31.1.1996 for over staying in the Government accommodation.

Mr. Ranjan Sharma has strenuously argued that the petitioner has not been served with a notice before the issuance of Annexures A-5 and A-6. He then contended that his client was never informed about the enhanced rent and he came to know about the same when he was served with a letter dated 28.6.1994 (Annexure A-3). He further contended that the respondents while effecting recoveries from the salary of the petitioner have not taken into consideration rule 9 of the Central Civil Services (Pension) Rules, 1972. He lastly contended that his client has retired on 30.9.1995 and no recoveries could be effected from the D.C.R.G. after his retirement vide Annexure A-5.

Mr. P.M. Negi has vehemently argued that as per letter dated 16.11.1988, the rent/licence fee was increased from Rs. 17.70 to Rs. 80/- per month.

4. I have heard the learned counsel for the parties and have perused the pleadings carefully.

Petitioner had been allotted type-III accommodation in the year 1982. He occupied the same. The Divisional Forest Officer (Territorial), Hamirpur has fixed the standard rent/licence fee of the allotted quarter @ Rs. 17.70 per month. Petitioner, as noticed above, had been paying this amount regularly. He has never been apprised about the enhanced amount as per letter dated 16.11.1988. This fact was brought to the notice of the petitioner only in the year 1994 by the Divisional Forest Officer Flying Squad, Hamirpur. In case the petitioner had been apprised of the enhancement of the standard rent, he would have either started paying the same or would have vacated the Government accommodation. There is no merit in the submission of Mr. P.M. Negi that the petitioner knew that the rent/ licence fee has been enhanced. Petitioner ought to have been informed about the same specifically.

The other glaring illegality committed by the respondent-Department is that the deduction has been made

from the salary of the petitioner with effect from April, 1995 to September, 1995 without issuing any show cause notice. The salary is a property within the meaning of Article 300-A of the Constitution of India and the same cannot be taken away without taking recourse to law. Similarly, the petitioner has also not been afforded reasonable opportunity of being heard at the time of issuance of Annexure A-5 dated 28.2.1996 and Annexure A-6 dated 6.6.1997. These have been issued after the retirement of the petitioner on 30.9.1995. Respondents could not become judge of their own cause. This amount was required to be adjudicated upon.

The Division Bench of this Court in ***Kamlesh Saxena and others versus State of H.P. and others***, ILR 1985 H.P. 605 has held that the ascertainment and recovery of Government dues, other than those covered by the Pension Rules, have to be done by means of a properly constituted suit in a court of competent jurisdiction, especially when there is a dispute. The Government cannot be a judge in its own cause in the absence of a statutory provision empowering it to act as such and it cannot evade having recourse to the remedy provided by the ordinary law. The Division Bench has further held that before the recoveries are effected from the death-cum-retirement gratuity, the Head of Offices is under a

duty to take steps, within one month of the receipt of intimation regarding the death of the Government servant, to ascertain whether such dues were recoverable from the deceased. The Division Bench has further held that reasonable opportunity of hearing coupled with the duty to arrive at a just and fair decision pursuant to an inquiry must, therefore, be regarded as a *sine qua non* to the exercise of power of recovery of the Government dues from the amount of DCRG payable to the family of the deceased Government servant. The Division Bench has held as under:

> **"14. The next question which must inevitably arise and which must be decided is whether the process of ascertainment of Government dues will require an inquiry being held or conducted by the Head of Office and, if so, what is the true nature and character of such inquiry. On the interpretation of sub-rule (2) of Rule 80-C given above, it is apparent that the Head of Office of the deceased Government servant will, in the first instance have to gather from different sources all the material particulars to satisfy himself whether any sum(s) was factually owed by the deceased to the Government and, if so, what precisely was such amount(s). It will have to be determined next whether the ascertained sum(s) was legally due and recoverable from the deceased Government servant. In the very nature of things, several questions of fact and law will ordinarily arise in this process which the Head of Office will have to determine and some sort of an enquiry, suitable to the occasion and appropriate in the circumstances of the case, is thus inevitable on his part in order to arrive at a just, proper and legal decision in**

the discharge of the duty legally entrusted to him under the law. The association of the family of the deceased Government servant with such an enquiry will be essential either to gather facts or to seek clarifications on issues of fact and law. That apart, the process of ascertainment of Government dues cannot but be regarded as quasi-judicial in nature, since the ultimate decision may result in the recovery of such dues from the amount of DCRF and may thus involve civil consequences for the family of the deceased Government servant. The duty to act judicially and to afford a reasonable opportunity of being heard to an authorized representative(s) of the family of the deceased Government servant in the course of the inquiry must, therefore, be regarded as implicit in sub-rule (2) of Rule 80-C. Unless the sub-rule is so understood and enforced, it would be exposed to the vice of unconstitutionality. A reasonable opportunity of hearing coupled with the duty to arrive at a just and fair decision pursuant to an inquiry must, therefore, be regarded as a sine qua non to the exercise of power of recovery of the Government dues from the amount of DCRG payable to the family of the deceased Government servant.

24. The Court cannot part with the case without dealing with the observations made in the ultimate paragraph of the letter dated August 7, 1985 (Annexure-III) which is quoted hereinabove and which records the decision of the first respondent arrived at pursuant to the interim order made by this Court. The Court finds that those observations are based upon a thorough misconception. The ascertainment and recovery of Government dues, other than those covered by the Pension Rules, have to be done by means of a properly constituted suit in a court of competent jurisdiction, especially when there is a dispute. The Government cannot be a judge in its own cause in the

> **absence of a statutory provision empowering it to act as such and it cannot evade having recourse to the remedy provided by the ordinary law on the specious grounds that it will have to engage in "unnecessary litigation." It is strange to find one of the biggest litigants, namely, the State, so averse to seeking adjudication from a civil court in regard to its dues on the wholly unacceptable ground that to engage in such litigation would be "unnecessary". It is still more surprising to find it coming forward with an untenable claim that *suo motu* relief be granted to it in writ jurisdiction for the recovery of the alleged government dues. The writ jurisdiction is not a remedy for the Government to enforce such disputed claims. Merely because Government dues are involved, no privilege of obtaining a "decree" in writ jurisdiction can be claimed by the Government. The analogy of public interest litigation, which is a strategic arm of the legal aid movement intended to bring justice within the reach of those who complain of violation of constitutional or legal rights and who are unable, on account of poverty, ignorance or socially or economically disadvantageous position, to seek redressal of injustice done to them, through the machinery of the hierarchy of courts, has no relevance in this context."**

Their Lordships of the Hon'ble Supreme Court in ***Union of India versus Natarajan***, 2010 (5) SLR 13 have held that retiral benefits payable to the employees cannot be revised without giving them notice and opportunity of hearing. Their Lordships have further held that rule of *audi alteram partem* has been treated as fundamental to the system established by rule of law and any action taken or

order passed without complying with that rule is liable to be declared void. Their Lordships have held as under:

> **"11. We have considered the respective submissions and carefully scrutinized the records. Although, neither the learned Single Judge nor the Division Bench considered the issue of violation of the rules of natural justice, having given serious thought to the entire matter, we are convinced that the retiral benefits payable to the respondents could not be revised to their disadvantage without giving them action oriented notice and opportunity of hearing. By virtue of the option exercised by them under Section 12A(4)(b) and consequential action taken by the competent authority to fix their pension etc., the private respondents acquired a valuable right to accordingly receive the financial benefits and the same could not have been reduced without complying with one of the basic rules of natural justice that no one shall be condemned unearned. The rule of audi alteram partem has been treated as fundamental to the system established by rule of law and any action taken or order passed without complying with that rule is liable to be declared void State of Orissa vs. Dr (Miss) Binapani Dei and others AIR 1967 SC 1269 and Sayeedur Rehman vs. State of Bihar and others (1973) 3 SCC 333.**
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> **12. It is not in dispute that before directing revision of the pension etc., payable to the private respondents, the Central Government did not give them action oriented notice and opportunity of showing cause against the proposed action. Therefore, it must be held that the direction given by the Central Government to revise the retiral benefits including the pension payable to the respondents was nullity.**
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> **13. Dehors the above conclusion, we are convinced that the action taken by the appellants to revise and reduce the retiral benefits payable to the respondents was ex facie arbitrary, unreasonable and unjustified and**

the learned Single Judge did not commit any error by declaring that the Central Government did not have the jurisdiction to unilaterally alter/ change the option exercised by the writ petitioners under Section 12A(4)(b) read with Section 12A(4C).”

Accordingly, in view of the observations made hereinabove, the petition is allowed. Annexures A-5 and A-6 dated 28.2.1996 and 6.6.1997, respectively are quashed and set aside. In normal circumstances, respondents ought to have been granted opportunity to proceed with the matter in accordance with law, however, since the petitioner has retired from service on 30.9.1995, the proceedings are closed. There shall, however, be no order as to costs.

(Rajiv Sharma),
Judge

22.9. 2010
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